

OCT 01 2008

JOHN F. CORCORAN, CLERK
BY: *J. Brant*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

WILLIAM HIGGINS :
26015 Brigadier Place, Unit E :
Damascus, Maryland 20872, :
:
Plaintiff, :
v. :
:
84 LUMBER COMPANY :
240 Yardmaster Court :
Stephenson, Virginia 22656 :
Serve: Edward R. Parker, :
Resident Agent :
5511 Staples Mill Road :
Richmond, Virginia 23228, :
:
and :

ANDREW STEINBURG :
240 Yardmaster Court :
Stephenson, Virginia 22656, :
:
Defendants. :
:

Case No.: 5:08-cv-00087

COMPLAINT

COMES NOW the Plaintiff, William Higgins, by and through counsel, David Galinis, Esq. and Berman, Sobin & Gross, LLP, and sues the Defendants, 84 Lumber Company and Andrew Steinburg and as causes of action state as follows:

1. Plaintiff is a resident of Montgomery County, Maryland.
2. Defendant 84 Lumber is a company incorporated in the state of Pennsylvania and a limited partnership whose principal place of business is in Pennsylvania.
3. Defendant 84 Lumber Company also does business in Stephenson, Frederick County, Virginia.
4. Defendant Andrew Steinburg is a resident of Virginia.

5. This Court has jurisdiction over this matter due to the diversity of citizenship of the parties.

Count I
(Negligence – Defendant Andrew Steinburg)

6. On or about October 17, 2006, Plaintiff, while exercising due care and without contributory negligence, was delivering lumber to Defendant 84 Lumber Company in Stephenson, Virginia.

7. At the same above-described place and time, Defendant Andrew Steinburg, an employee of Defendant 84 Lumber Company, was operating a forklift in the vicinity of Plaintiff.

8. Defendant Andrew Steinburg drove the forklift into Plaintiff's right hip, knocking him to the ground. Defendant Andrew Steinburg then ran over Plaintiff's right foot, crushing it and causing multiple fractures.

9. Defendant Andrew Steinburg owed Plaintiff the following duties: to use ordinary and reasonable care in operating the forklift; to avoid operating the forklift in a manner that created a hazard to others; to properly maintain the forklift; and to keep an adequate and proper lookout at all times for pedestrians.

10. Defendant Andrew Steinburg was negligent in that he breached the above-described duties when he acted in the manner described above.

11. The negligence of Defendant Andrew Steinburg directly and proximately caused Plaintiff injuries that include, but are not limited to, his hip and right foot, all of which have caused and will continue to cause Plaintiff extreme pain, mental anguish, permanent disability, loss of the ability to enjoy normal recreational activities, loss of earnings and earning capacity, and substantial medical expenses.

WHEREFORE, Plaintiff demands judgment against Defendant Andrew Steinburg in the amount of Three Million Dollars (\$3,000,000.00) plus interest and the costs of this suit.

Count II
(Negligent Hiring/Supervision/Training – Defendant 84 Lumber)

12. Plaintiff adopts and incorporates by reference paragraphs 1 through 10 as if they were fully set forth herein

13. Defendant 84 Lumber Company hired Defendant Steinburg, trained him to use the above-described forklift and under its aegis allowed him to operate the forklift.

14. Defendant 84 Lumber Company knew or should have known of Defendant Steinberg's propensity to commit the acts described above.

15. Defendant 84 Lumber Company had a duty to use reasonable care to hire and retain an employee who was competent and fit to perform the duties of Defendant Steinberg's position, as well as to train him for that position. A reasonable and prudent employer would not have ignored the indications of Defendant Steinburg's unfitness for such duties. Defendant 84 Lumber Company knew, or should have known, that Defendant Steinburg would be in contact with pedestrians while driving the forklift. Plaintiff was a member of the public who would foreseeably come into contact with Defendant Steinburg. Therefore, Defendant 84 Lumber Company owed Plaintiff duties to use reasonable care to hire and retain an employee for Defendant Steinberg's position and to train that employee. Defendant 84 Lumber Company failed to fulfill and breached all the aforementioned duties.

16. As a result of Defendant's negligence in hiring, retaining and/or training Defendant Steinburg, Plaintiff was injured as alleged.

WHEREFORE, Plaintiff demands judgment against Defendant 84 Lumber in the amount of Three Million Dollars (\$3,000,000.00) plus interest and the costs of this suit.

Count III
(Vicarious Liability – Defendant 84 Lumber)

17. Plaintiff adopts and incorporates by reference paragraphs 1 through 15 as if they were fully set forth herein.
18. At all times relevant hereto, Defendant Steinburg was employed by Defendant 84 Lumber Company.
19. The acts of Defendant Steinburg as described in this Complaint were committed within the scope of his employment with Defendant 84 Lumber Company, in that he committed them while on duty, using the equipment of Defendant 84 Lumber Company, under the auspices of Defendant 84 Lumber Company and in furtherance of Defendant 84 Lumber Company's interests.
20. As Defendant Steinburg's employer, Defendant 84 Lumber Company is responsible for all the acts committed by Defendant Steinburg within the scope of his employment.

WHEREFORE, Plaintiff demands judgment against Defendant 84 Lumber in the amount of Three Million Dollars (\$3,000,000.00) plus interest and the costs of this suit.

BERMAN, SOBIN & GROSS, LLP



David Galinis, Esq.
Bar No.: 45386
481 N. Frederick Avenue, Suite 300
Gaithersburg, MD 20877
(301) 670-7030
Attorney for Plaintiff

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FOR THE WESTERN DISTRICT OF VIRGINIA
D. Bruce
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and :

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Defendants. :Case No.: 5:08-cv-00087**LINE TO ISSUE SUMMONS**

DEAR CLERK: Please issue a Writ of Summons and a copy of the Complaint to the above-named Defendants, to be served by private process pursuant to the Federal Rules of Civil Procedure.

BERMAN, SOBIN & GROSS, LLP

David Galinis, Esq.

Bar No.: 45386

481 N. Frederick Avenue, Suite 300
Gaithersburg, MD 20877

(301) 670-7030

Attorney for Plaintiff

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Defendants. :

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REQUEST FOR JURY TRIAL

The Plaintiff, by and through counsel hereby requests a trial by jury on all issues.

[Signature]
BERMAN, SOBIN & GROSS, LLP

[Signature]
David Galinis, Esq.
Bar No.: 45386
481 N. Frederick Avenue, Suite 300
Gaithersburg, MD 20877
(301) 670-7030
Attorney for Plaintiff

BERMAN, SOBIN
& GROSS, LLP
SUITE 300
481 NORTH FREDERICK AVE.
GAIITHERSBURG, MD 20877
(301) 670-7030
[Signature]